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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,367	04/12/2004	Fred Sterzer	MMTC 04-1	3072

7590  
FRED STERZER  
MMTC, INC.  
SUITE A-203  
12 ROSZEL ROAD  
PRINCETON, NJ 08540

EXAMINER
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GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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06/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,367	<b>Applicant(s)</b> STERZER ET AL.	
	<b>Examiner</b> Roy D. Gibson	<b>Art Unit</b> 3739	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6,8-10 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 4,5,7 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Formal Matters***

In light of newly found prior art, the allowability of various claims has been withdrawn, therefore, this Office action is non-final.

### ***Information Disclosure Statement***

The information disclosure statement filed 13 July 2004 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, the information referred to therein has been considered and listed on the attached Form 892.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 6, 8, 9, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Zelickson et al. (6,073,052). Zelickson et al. disclose a balloon catheter wherein both a microwave feedline and an antenna (Figure 3 with antenna 16A) are located entirely outside of said balloon with said antenna being longitudinally physically situated in cooperative relationship with said exterior surface of said balloon, thereby in use causing said inflated balloon pressing said diseased tissue to result in said antenna being in direct contact with irradiated tissue of said patient (Figures 1 and 3, col. 2, line 50-col. 3, line 59 and col. 4, line 32-col. 5, line 27);

wherein said external antenna is a directional antenna (col. 3, lines 459);

wherein said external antenna is an “antenna” (assumed to mean an omni-directional antenna: (col. 3, lines 58-59);

wherein said antenna is a directional antenna that (1) is longitudinally physically situated in cooperative relationship with said exterior surface of said balloon, thereby in use capable of causing said inflated balloon pressing against said lining tissue of said orifice that is adjacent to said patient's prostate tissue, to result in said antenna being in direct contact with said lining tissue of said patient and (2) transmits radiant energy of a given frequency band to said diseased prostate tissue in response to power within said given frequency band being supplied to said antenna; and

a power source (14) and means including a feedline, both said power source and said feedline being located entirely outside of said balloon for supplying a given amount

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of power within said given frequency band to said external directional antenna, thereby to irradiate said diseased tissue and thereby effect the heating to a given therapeutic temperature;

wherein said balloon catheter comprises:

means for supplying said balloon's interior volume with a coolant fluid (inflation fluid can be cooled before insertion) for removing heat from said lining tissue of said orifice thereby to maintain the temperature of said lining tissue of said orifice at a safe temperature;

wherein said safe temperature is capable of can be adjusted to no higher than 42°C (col. 2, lines 51-76).

Claims 1 and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Kasevich et al. (5,057,106). Kasevich et al. disclose a balloon catheter wherein both a microwave feedline and an antenna are located entirely outside of said balloon with said antenna being longitudinally physically situated in cooperative relationship with said exterior surface of said balloon, thereby in use causing said inflated balloon pressing said diseased tissue to result in said antenna being in direct contact with irradiated tissue of said patient (col. 2, lines 42-54, col. 5, lines 28-38, col. 7, lines 57-62 and col. 8, lines 35-52).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zelickson et al. (6,073,052) in view of DeFord et al. (5,304,214). Zelickson et al. discloses only a single lumen for inflating and cooling the balloon/antenna, but DeFord et al. discloses a balloon catheter wherein said catheter body comprises:

an input lumen that provides a first pathway for coolant fluid from a source situated outside of said balloon catheter to enter said balloon; and

an output lumen that provides a second pathway for said to leave said balloon and exit said balloon catheter as an alternative equivalent (col. 41, line 52-col. 42, line 21). Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the device of Zelickson et al., as taught by DeFord et al., to provide a second lumen for circulating the inflation/cooling fluid as an alternative equivalent means well known in the art.

Further to claims 15-17, the device of Zelickson et al. is capable of being used in a patient's urethra and this functional limitation is "intended use" only which does not impose a structural change to the device.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zelickson et al. (6,073,052) in view of Kasevich et al. (6,097,985). Zelickson et al. discloses the radiant energy can be RF or microwave, but fails to specifically disclose the frequency is 915 Mhz. But, Kasevich et al. disclose a microwave system for medical hyperthermia wherein the applied power is provided at a frequency of 915 Mhz to the antennas. Therefore, at the time of the invention it would have been obvious to one of ordinary skill in the art to provide a frequency for the device of Zelickson et al., as taught by Kasevich et al., at 915 Mhz to effectively heat tissue as required for the procedure.

#### ***Allowable Subject Matter***

Claims 4, 5, 7 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Roy D. Gibson/  
Primary Examiner  
Art Unit 3739

June 4, 2008